

September 15, 2009

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND RECOMMENDATION

APPLICANT: Conner Homes at Barbee Mill LLC
Attn: Gary Upper
846 108th Avenue NE
Bellevue, WA 98004, and

CONTACT: David Douglas
Waterfront Construction, Inc.
10315 19th Avenue SE, Ste. 106
Everett, WA 98208

LUA-09-074, SM, SMC, ECF

LOCATION: 4113 & 4119 Williams Avenue N

SUMMARY OF REQUEST: Shoreline Conditional Use Permit and a Shoreline Substantial Development Permit for the construction of a 80-foot long joint use dock with a boat lift or two mooring piling on either side of the proposed dock in association with two attached residential units on the shore of Lake Washington.

SUMMARY OF ACTION: Development Services Recommendation: Approve

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on August 25, 2009.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

MINUTES

*The following minutes are a summary of the September 1, 2009 hearing.
The legal record is recorded on CD.*

The hearing opened on Tuesday, September 1, 2009, at 9:00 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<u>Exhibit No. 2:</u> Neighborhood Detail Map
<u>Exhibit No. 3:</u> Vicinity Map and Area Map	<u>Exhibit No. 4:</u> Plot Plan

<u>Exhibit No. 5:</u> Proposed Pier Detail	<u>Exhibit No. 6:</u> Proposed Pier Elevation View
<u>Exhibit No. 7:</u> Planting Plan	<u>Exhibit No. 8:</u> Zoning Map
<u>Exhibit No. 9:</u> ERC Determination	<u>Exhibit No. 10:</u> ERC Mitigation Measures
<u>Exhibit No. 11:</u> ERC Advisory Notes	<u>Exhibit No. 12:</u> Shoreline Substantial Development Permit

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The upland properties associated with the joint use dock are 4119 and 4113 Williams Ave N. These properties have two attached residential units, paired dwelling units and are located in the COR zone. The property at 4113 is 5,773 square feet and at 4119 the property is 5,042 square feet.

The construction materials, personnel and equipment would be transported to the site via a construction barge. The dock would be 80-feet long with a 40-foot fully grated ramp section that would be 3-ft, 9-in in width and the pier section supported by six eight-inch vibratory driven pilings would be 5-ft, 10-1/2-in in width. The boat lifts would be pre-manufactured and transported to the site via a construction barge. They would be approximately 10-ft by 10-ft and supported directly on the lake bottom by four, 4-ft square footpads.

All material used in the hydraulics are non-toxic and the batteries are solar powered.

The mooring pilings would be 10-in diameter steel pilings, they would extend no more than 6-ft above the surface of the water at the ordinary high water line.

Boat lifts and mooring pilings are not specifically specified in the Shoreline Master Program, they do require approval of a Shoreline Conditional Use Permit.

The ERC issued a Determination of Non-Significance – Mitigated with 3 conditions. No appeals were filed.

A determination on a Shoreline Conditional Use Permit includes five criteria that must be met, this project has satisfied all five of the criteria. A Shoreline Conditional Use Permit should be approved for this project subject to conditions.

The Examiner asked if the boat dock and mooring pilings mutually exclusive or will potentially both be on either side of the dock. Will there be a boatlift and mooring pilings north and south, or if mooring pilings were installed now, they would be removed if a boatlift were installed later on.

Mr. Wasser stated that both could be there but by this request it is either or, a boatlift or two mooring pilings on either side. Should at some point an owner decide that they wanted additional moorings, they would have to apply for an additional Shoreline Conditional Use Permit.

Gary Upper, 846 108th Ave NE, Bellevue, WA 98004 stated that one of the two homes has been sold but has not closed as yet. It appears that the owner will opt for a boatlift. That would be Lot 4119.

The way the request for the boatlift or mooring pilings is worded, it is mutually exclusive, the owners will make a choice of having a boatlift or mooring pilings. Generally a boatlift would be for a smaller boat and the mooring pilings would be for a larger boat that you would want to tie up.

Rich Wagner, 2411 Garden Court, Kenndale stated that as a member of the Housing Committee many years prior, one of the things the City struggled with was affordable housing, in the process they were actually driving unaffordable housing into other areas beyond the Renton City limits. When this Conner project went through, he felt it was one of the most exciting things to happen for a long time. Large docks like this are the amenities that come with unaffordable housing. This is a great bonus for our community, for so many years Renton has focused on affordable housing, which is equally valid, but in the process there were not many opportunities for wealthy people to live here. This is exciting and he encouraged the Examiner to say yes.

From a personal point of view, not as a potential buyer, he thought it would be exciting to have the option of either a lift or the moorings. There seems to be no reason why either one of those would be excluded.

Kayren Kittrick, Community and Economic Development stated they should always call before digging or putting in pilings. If water is to be run to the dock they need to reference cross connection rules. There could be cables under the water, just be sure to check prior to any digging.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 9:27 a.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The applicant, Connor Homes, filed a request for a Shoreline Conditional Use Permit as well as a Shoreline Substantial Development Permit to install mooring pilings or boatlifts as well as an associated dock in Lake Washington.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance- Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. There was no opposition from the public regarding the subject proposal.
6. The subject site is located at 4113 and 4119 Williams Avenue North. The subject site consists of two side-by-side lots. The subject site is located west of Lake Washington Boulevard on the shoreline of Lake Washington.
7. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of commercial office or residential uses, but does not mandate such development without consideration of other policies of the Plan.
8. The subject site is currently zoned COR (Commercial, Office, Residential). The site is developed with a variety of residential uses.

9. The subject site was annexed to the City with the adoption of Ordinance 1800 enacted in October 1959.
10. The two lots are approximately 10,815 square feet but a portion of the property extends out into the lake.
11. Duplex residential townhomes are located on the eastern, uplands portion of the site.
12. One townhome has recently been sold while the other remains unsold so the applicant has proposed erecting a dock and either a boatlift or boatlifts or four mooring pilings in the lake. This would provide the eventual owner a choice of a boatlift or mooring pilings. The pier which is a permitted use for residential uses under the Shoreline Master Program will straddle the lot line as it extends out into the lake. The Shoreline Master Program does not identify boatlifts or mooring pilings in its text as a permitted use and, therefore, it must be reviewed under the Shoreline Conditional Use provisions.
13. The pier or dock will be 80 feet long. The 40 feet nearest the shore will be 3 feet 9 inches wide. The remaining 40 feet will be 5 feet 10.5 inches wide. The width appears to be standard as other docks for this plat have the same dimensions where the length varies due to water depth. The entire surface will be grated to allow light to penetrate under the dock to avoid shadows that allow salmon predators to hide. Again, this portion of the proposal does not need a special permit.
14. The applicant proposes the installation of two free-standing boatlifts or four (4) mooring pilings. There would or could be a boatlift on either side of the piers or two pilings north of the dock and two south of the dock. The boatlifts would be set on the lake bottom on pads. They would be hydraulic and the fluids used are non-toxic. The alternative pilings are intended to tie-off boats slightly away from the dock to avoid having boats banging into the dock. These pilings would be 10 inches in diameter and extend to approximately 6 feet above the Ordinary High Water Line. The pilings would be 16 feet respectively from the north and south edges of the dock. As noted above, boatlifts and mooring pilings are not identified in the text of the Master Program which therefore requires review under the Conditional Use provisions of City and State law.
15. All construction would be accomplished from the lake by barge. The work is expected to take approximately 5 to 7 days. The work would be accomplished with a vibratory pile driver.
16. Code requires a five foot side yard setback from the property line. The proposal meets this requirement.
17. The work will be done in the time window specified by the state to avoid interfering with salmon activity in the lake. A silt fence will be installed around the work area.
18. The development of the uplands resulted in the planting of native vegetation on the shoreline. The applicant will supplement these planting with additional plantings in association with dock construction.
19. Lake Washington's shoreline is classified as a Shoreline of Statewide Significance and therefore any development adjacent to it is subject to the City's Shoreline Master Program. This section of the shoreline is designated as an Urban Shoreline.
20. This is one of a series of similar requests for joint use docks and associated boatlifts or pilings for this newly developed plat. Other boatlifts have been approved along other areas of the Lake Washington shoreline in Renton. A few mooring piling requests have recently been approved.

CONCLUSIONS:

1. The criteria for approving a Shoreline Conditional Use permit are twofold. There are City criteria and those City criteria require compliance with additional State criteria. Those criteria are as follows:

Renton: Section 4-9-190.I.5:

5. Conditional Use:

- a. Purpose: Upon proper application, a conditional use permit may be granted. The objective of a conditional use provision is to provide more control and flexibility for implementing the regulations of the Master Program. With provisions to control undesirable effects, the scope of uses can be expanded to include many uses.
- b. Decision Criteria: Uses classified as conditional uses can be permitted only after consideration and by meeting such performance standards that make the use compatible with other permitted uses within that area. A conditional use permit will be granted subject to each of the following conditions:
 - i. The use must be compatible with other permitted uses within that area.
 - ii. The use will not interfere with the public use of public shorelines.
 - iii. Design of the site will be compatible with the surroundings and the City's Master Program.
 - iv. The use shall be in harmony with the general purpose and intent of the City's Master Program.
 - v. The use meets the conditional use criteria in WAC 173-27-160.

Washington State: WAC 173-27-160:

Review criteria for conditional use permits. The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

- (1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
 - (b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

2. The area is zoned for a variety of uses including residential uses. It was platted and developed for residential uses. Many residential properties along Renton's Lake Washington shoreline are served by docks and piers. As noted, mooring piling requests for neighboring properties have recently been approved. Boatlifts have been more common. The lifts and pilings are proposed for the private areas of lake bottom and the adjacent uplands although they are located in the lake. They should be non-intrusive visually and have become a more common element of already permitted pocks and piers. They should not present an unusual obstacle to navigation.
3. The proposed lifts and pilings should not interfere with public use of the shoreline, particularly since this is a private shoreline. The dock the lifts or pilings will serve will already extend out into the lake and therefore, additional structures should not hamper near-shore navigation. This shoreline is privately owned and developed with duplex housing.
4. The lifts and pilings will be setback from property lines more than required by code and will not create any untoward impacts on adjacent uses or on water-oriented uses. The fact that the dock will be shared reduces the number of projections out into the lake so the additional lifts or pilings will be less intrusive than a second dock.
5. The next series of criteria are contained within the Washington Administrative Code. One of the paramount goals is to protect the ecology of the shoreline. The applicant proposes additional plantings in conjunction with installing the dock. The lifts and pilings will be out in the lake and not affect the actual shoreline, although the dock and pilings will obvious permit and encourage boating on the lake.
6. The lots, as noted, are private and extend out into the lake. The proposed lifts or pilings will serve their respective lots. Private uses are permitted in this area of the shoreline. The use is similar to those uses permitted in an urban shoreline. The use should not impair the public use of this section of the lakeshore or the water in its vicinity.

7. The pier, lifts and pilings should not interfere with any uses that might occur in this area of the lake. The comprehensive plan designates this area as suitable for residential uses and the usual complement of accessory uses. On a lakeshore property, piers docks and similar uses including the proposed pilings would be considered reasonable accessory uses.
8. The proposed lifts and pilings should not create any significant adverse affects on the shoreline environment.
9. The pier, lifts and pilings should not further harm the public interest.
10. As noted in earlier decisions, the analysis of cumulative impact or impacts is hard to judge. This is an urban shoreline of Lake Washington and piers have been an accepted accessory use of waterfront property and others already exist in Renton and surrounding shoreline areas. The lifts and pilings would be located shoreward of the pier's end. Any number of docks already protrude out into the lake from many of the homes along the shore. Clearly, there have had to be impacts to water quality and habitat as a result of motor boating and docks shading the lake and some of the shallow areas. This additional action will probably not have much of a significant effect on the lake or shore.
11. Since lifts and pilings are neither permitted nor prohibited outright, they do require review under the Conditional Use criteria. The proposed use is generally consistent with the criteria noted above.
12. Ownership and access and maintenance agreements for this shared use should be executed.

RECOMMENDATION:

The Conditional Use Permit and the Shoreline Substantial Development Permit for the pier, boatlifts and mooring pilings should be approved subject to the following conditions:

1. The applicant shall comply with the mitigation measures imposed by the Environmental Review Committee in its Determination of Non-Mitigated issued on August 10, 2009.
2. The applicant shall prepare a restrictive covenant with the appropriate signatures of the property owners and recorded with King County. The document shall specify ownership rights and maintenance provisions for the dock, boatlifts and mooring pilings. The restrictive covenant shall contain a statement that the covenant shall remain with the property and can only be released by written permission granted by the City of Renton. A copy of the restrictive covenant shall be provided to the Planning Division project manager for review and approval prior to recording with King County. Building permits for the dock, boatlifts and mooring pilings may be issued only subsequent to recording the restrictive covenant.
3. The applicant shall comply with all construction conditions by the State agencies and all construction conditions provided in the application submitted to the City.

ORDERED THIS 15th day of September 2009.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 15th day of September 2009 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Marty Wine, Assistant CAO	Transportation Division
Gregg Zimmerman, PBPW Administrator	Utilities Division
Alex Pietsch, Economic Development	Neil Watts, Development Services
Jennifer Henning, Development Services	Janet Conklin, Development Services
Stacy Tucker, Development Services	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., September 29, 2009** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., September 29, 2009.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.